IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 992 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SULTANALI GABHARUDDIN KHOJA

Versus

STATE OF GUJARAT

Appearance:

MR NAGIN N GANDHI for Petitioner

Mr. A.J. Desai, APP for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 21/01/2000

ORAL JUDGEMENT

Heard learned Advocate Mr. N.N. Gandhi for the petitioner and learned A.P.P. Mr. A.J. Desai for the respondents nos.1 and 2.

1. The petitioner has challenged the legality, validity and propriety of the order passed by the Deputy

Secretary, Home Department of the respondent no.1-State in the proceedings of appeal against the order of externment passed by the respondent no.3 against the petitioner dated 28-7-1999.

2. That the notice under Sec.59 of Bombay Police Act,1951 dated 22-6-1999 was served to the petitioner so as to show cause why the petitioner should not be externed for a period of two years from the area comprised within Ahmedabad Rural District and City, Bhavnagar District, Surendranagar District and Kheda District. The said notice inter alia indicate that three criminal cases bearing CR nos.9/97, 42/98 and 83/98 were registered against the petitioner at Barawala Police Station. That on the basis of information received, the respondent no.2 was satisfied that conduct of the petitioner indulging into criminal activities create fear in the mind of the residents of the said Town and his movements caused terror and fear to the people. That on account of fear or hurt to the person or property, no witnesses were ready to come forward to file complaint or support the allegations made in the complaint against him.

3. On the basis of the said material, the respondent no.3 decided to extern the petitioner for a period of two years from the above stated area of different Districts. The petitioner was called upon to submit his explanation and produce evidence, if any, including the witnesses on a specified date and time.

4. The petitioner has averred and contended that the petitioner has filed his explanation and produced the evidence and had made submission against the allegations contained in the said show cause notice. However, vide order dated 28th July, 1999, the respondent no.3 externed the petitioner for a period of two years from the said area of Ahmedabad (Rural District) and City Bhavnagar District, Surendranagar District and Kheda District.

5. That being aggrieved and dissatisfied by the said order, the petitioner preferred appeal under Section 60 of the Bombay Police Act (hereinafter referred to as the "Act"). That the respondent no.2 heard the said appeal and vide order dated 25-10-1999, varied the order passed by the respondent no.3 and directed the petitioner to furnish personal bond of Rs.25,000/- and two sureties for the like amount. The petitioner having been aggrieved by the said order has challenged both the orders in the present petition.

6. It has been submitted at the Bar on behalf of the petitioner that Sec.60 of the Bombay Police Act conferred power on specified authority to confirm, vary or cancel or set aside the order appealed against, or remand the case for disposal with such direction as it or he thinks fit and make its or his order accordingly. That thereby, the appellate authority can vary the order within the scope of Section 56 only.

7. That in the instant case, the appellate authority having disagreed with the findings given by the respondent no.3 either should have cancelled and set aside the order or ought to have remanded the order with a direction but the respondent no.2 has no authority or jurisdiction to vary or alter the nature and characteristic of the order and impose on petitioner an obligation which is not prescribed by the provisions of law. That neither Sec.56 nor Sec.60 prescribes that a bond from a petitioner so as to prevent the alleged nefarious activity as stated in Sec.56 of the Act could be taken from a party either under Sec.56 or 60.

8. The learned A.P.P. Mr. A.J. Desai has opposed the contention relying on the observations made by the Division Bench of this Court in the case of RAZAKBHAI ABDULBHAI GHANCHI VS. STATE OF GUJARAT (1994(2) G.L.R. 1603).

9. In RAZAKBHAI'S case (Supra), the Division Bench of this Court has held that the term " vary " as used in the provisions of Section 60(3) of the Bombay Police Act, 1951 is regarded as synonymous with the word, " alter" and has held that the Appellate Authority has power to set aside the order of externment and direct the externee to comply with other conditions which would fall in the first part of the two alternatives. The following observations being material and relevant is extracted hereinunder:

" It is, thus, clear that word "vary in the context in which it occurs in Section 60(3) would include power to alter or modify the order, which in its turn would mean that the entire identity of the order would not be lost. The satisfaction of the externing authority for action under Sec.56 shall have to be maintained if the order is to be varied either from that of actual externment to that of imposition of any condition or for reducing the period of externment or for reducing or deleting the districts from which the proposed externee is to be externed. In all such situations, the appellate authority is exercising power of varying the order and

yet it can be said that identity of the requisite satisfaction is left intact or is not wholly disturbed. This is the meaning which the word "vary" carries in the context of Sec.60(3) of the said Act and, in our opinion, when the appellate authority sets aside the order of externment and directs the externee to comply with the other conditions which would fall in first part of the two alternatives, he is acting absolutely within his jurisdiction and power under Sec.60(3) of the said Act and such an order cannot be said to be beyond his jurisdiction or power or beyond the scope of Sec.60(3) of the said Act."

10. That the aforesaid observation made by the Division Bench is made in the context of facts involved in the said case where the satisfaction of the externing authority for action under Sec.56 is maintained. However, in the instant case, the facts involved in the matter are different and distinct. It may be noted that in the impugned order, copy of which is produced at Annexure "B", the appellate authority has observed that registration of criminal case under the provisions of the Bombay Prevention of Gambling Act,1887 would not attract the provisions of Section 56(A) and 56(B) of the Bombay Police Act, 1951. That the authority could apply the provisions of Sec.57 on the said fact. That, in the instant case, show cause notice issued to the petitioner discloses that out of three cases registered against the petitioner, two cases are registered under the provisions of Prohibition of Gambling Act which is contrary to the provisions of law. That the appellate authority has also observed that allegations in respect to unregistered eight offences stated in show cause notice dated 22-6-1999 issued to the petitioner are vague and general which has deprived the petitioner an opportunity to contest the same, and thereby, the proceedings are illegal. That on the basis of the said observations, it has to be held that the entire proceedings before the competent authority under Sec.56 of the Bombay Police Act, 1951 against the petitioner were vitiated and it cannot be said that the subjective satisfaction reached by the externing authority has remained intact. That in the context of the said peculiar facts, the ratio of the rule stated in RAZAKBHAI'S case (Supra) is not applicable to the present case. That the appellate authority himself having given finding contrary to the finding recorded by the competent authority ought to have set aside the order for which the material as required by law was not available as per the finding of the appellate authority but could not have imposed condition. Under the circumstances, the impugned order being illegal is

required to be quashed and set aside.

11. On the basis of the aforesaid discussion, the petition is allowed. The impugned order Annexure "B" dated 25-10-1999 passed by the respondent no.2 in appeal proceedings under Sec.60 of the Bombay Police Act, 1951 is hereby quashed and set aside. Rule to that extent is made absolute.

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